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TO YOU QUOTE

UNCLAS CANBERRA 4480

DEPARTMENT PLEASE PASS ALL OECD CAPITALS

E.O. 11652 N/A
TAGS: EALR, ECON, EINV, AS
SUBJ: TREASURER HOWARD ANNOUNCES REVISED FOREIGN INVESTMENT GUIDELINE
S

REF: (A) CANBERRA 4447, (B) 76 CANBERRA 2493 (BOTH NOTAL)

1. SUMMARY: TREASURER, MR. HOWARD, ANNOUNCED IN PARLIAMENT
JUNE 8 REVISED FOREIGN INVESTMENT GUIDELINES, PRINCIPAL ELEMENTS
OF WHICH ARE: (1) PROVISIONS WHEREBY LESS THAN 50 PERCENT OWNED
AUSTRALIAN COMPANIES MAY EMBARK ON MINING OPERATIONS IF THEY
AGREE TO FUTURE " NATURALIZATION" PROCESS DESIGNED TO BRING THEM
TO 51 PERCENT AUSTRALIAN OWNERSHIP AND CONTROL; INCREASE TO
A DOLS 5 MILLION AS LEVEL OF INVESTMENT BELOW WHICH GOVERNMENT
APPROVAL NOT RPT NOT NEEDED (URAMIUM MINING AND FINANCIAL
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SECTOR EXCLUDED); (3) IN CASES WHERE FOREIGN TAKE OVERS ACT
APPLICABLE, INCREASE TO A DOLS 2 MILLION AS LEVEL WHERE
GOVERNMENT WOULD NOT NORMALLY INTERVENE (FINANCIAL AREA
EXCLUDED); (4) INDIVIDUAL REAL ESTATE PURCHASES OF LESS THAN
A DOLS 250,000 WILL NOT REQUIRE GOVERNMENT APPROVAL (5)
ADVANCE EXCHANGE CONTROL APPROVAL TO BE GIVEN BY RESERVE BANK
OF AUSTRALIA PENDING APPROVAL OF A NEW INVESTMENT; (6)
REMOVAL OF EXCHANGE CONTROLS ON SHORT TERM OVERSEAS BORROWINGS.
END SUMMARY.

2. FULL TEXT OF HOWARD STATEMENT FOLLOWS:

". IT IS NOT JUST OVER TWO YEARS SINCE MY PREDECESSOR ANNOUNCED THE GOVERNMENT'S FOREIGN INVESTMENT POLICY IN A STATEMENT TO THIS HOUSE DATED 1 APRIL 1976. IN THE LIGHT OF EXPERIENCE GAINED IN THAT PERIOD, IT IS TIMELY THAT THE POLICY BE REVIEWED.

"THE GOVERNMENT RECOGNIZES THAT, DESPITE AUSTRALIA'S HIGH LEVEL OF DOMESTIC SAVINGS, WE WILL CONTINUE TO EQUIRE OVERSEAS CAPITAL TO ASSIST IN THE DEVELOPMENT OF OUR INDUSTRIES AND RESOURCES. A PRIMARY OBJECTIVE OF THE GOVERNMENT'S POLICY REMAINS THEREFORE TO ENCOURAGE FOREIGN INVESTMENT IN AUSTRALIA. IT IS AGAINST THIS CENTRAL CONSIDERATION THAT THE GOVERNMENT HAS UNDERTAKEN A REVIEW OF FOREIGN INVESTMENT POLICY.

"THE GOVERNMENT HAS DECIDED THAT THERE SHOULD BE NO FUNDAMENTAL CHANGES TO THE BASIC OBJECTIVES OF THE POLICY, AS ANNOUNCED BY MY PREDECESSOR. IN ARRIVING AT THIS DECISION THE GOVERNMENT HAS BEEN MINDFUL OF THE FACT THAT THE PRESENT POLICY HAS ACHEIVED WIDE-SPREAD ACCEPTANCE FROM THE BUSINESS SECTOR, INCLUDING BOTH AUSTRALIAN AND OVERSEAS COMPANIES, AND FROM THE AUSTRALIAN COMMUNITY AT LARGE. THIS HAS LED TO THE ESTABLISHMENT OF A STABLE INVESTMENT CLIMATE IN WHICH OVERSEAS INVESTORS CAN PLAN UNCLASSIFIED

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THEIR FUTURE OPERATIONS IN AUSTRALIA.

"NEVERTHELESS THE GOVERNMENT WISHES TO RELAX PROCEDURAL REQUIREMENTS WHEREVER EXPERIENCE HAS SHOWN THIS TO BE POSSIBLE. ACCORDINGLY, THE GOVERNMENT HAS DECIDED THAT FORTHWITH:-

". PROPOSALS FOR FOREIGN INVESTMENT IN NEW PROJECTS WILL NOT REQUIRE GOVERNMENT APPROVAL UNDER THE FOREIGN INVESTMENT GUIDELINES UNLESS THE PROJECT INVOLVES AN INVESTMENT OF DOLS 5 MILLION OR MORE (THIS DOES NOT APPLY TO INVESTMENT IN THE FINANCIAL SECTOR AND URANIUM);

". IN THE CASE OF INVESTMENTS COMING WITHIN THE SCOPE OF THE FOREIGN TAKEOVERS ACT, THE GOVERNMENT WILL NOT NORMALLY SEEK TO INTERVENE IF THE ASSETS OF THE COMPANY BEING TAKEN OVER ARE LESS THAN DOLS 2 MILLION, UNLESS THERE ARE SPECIAL CIRCUMSTANCES OR THE BUSINESS IS IN THE FINANCIAL SECTOR OR SOME OTHER AREA WHERE SPECIAL CONSIDERATIONS APPLY; AND

". INDIVIDUAL REAL ESTATE ACQUISITIONS OF LESS THAN DOLS 250,000 WILL NO LONGER REQUIRE APPROVAL.

"THE GOVERNMENT HAS ALSO REFERRED FOR DETAILED LEGAL STUDY CERTAIN POSSIBLE AMENDMENTS, ESSENTIALLY OF A TECHNICAL KIND, TO THE FOREIGN TAKEOVERS ACT.

" THE PRINCIPAL PROPOSAL UNDER CONSIDERATION WOULD REMOVE THE

NEED FOR COMPULSORY NOTIFICATION TO THE GOVERNMENT OF ACQUISITIONS OF SUBSTANTIAL SHAREHOLDINGS IN AUSTRALIAN COMPANIES - MANY OF WHICH DO NOT CHANGE THE ULTIMATE OWNERSHIP AND CONTROL OF THE ENTERPRISE, BEING CORPORATE RE-ARRANGEMENTS, AND ACQUISITIONS OF SHELF AND SHELL COMPANIES, WHICH ARE OF NO POLICY SIGNIFICANCE. IT WAS NEVER INTENDED THAT THE ACT COVER THESE PROPOSALS. REPEAL OF THIS PROVISION (SECTION 26) WOULD ELIMINATE A LARGE NUMBER OF PROPOSALS WHICH ARE CURRENTLY NOTIFIED AS A TECHNICALITY BUT WHICH ARE NOT SUBJECT TO ACTION

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UNDER THE ACT. IT WOULD NOT REDUCE THE GOVERNMENT'S CAPACITY TO EXAMINE TAKEOVER PROPOSALS WHICH WOULD RESULT IN A CHANGE IN CONTROL.

"THE POSSIBLE LEGISLATIVE AMENDMENTS, WILL BE THE SUBJECT OF FURTHER DETAILED EXAMINATION BY MY DEPARTMENT IN CONJUNCTION WITH THE ATTORNEY-GENERAL'S DEPARTMENT.

"I TURN NOW TO ANOTHER ASPECT OF THE FOREIGN INVESTMENT GUIDELINES WHICH THE GOVERNMENT HAS HAD UNDER EXAMINATION. WE HAVE BEEN ASSISTED IN OUR CONSIDERATION OF IT BY RECENT CONSULTATIONS WITH A NUMBER OF COMPANIES AND HAVE TAKEN INTO ACCOUNT THE RANGE OF VIEWS EXPRESSED.

"THE GOVERNMENT'S POLICY IS TO WELCOME OPPORTUNITIES FOR AUSTRALIANS TO PARTICIPATE IN THE OWNERSHIP AND MANAGEMENT OF FOREIGN OWNED COMPANIES OPERATING IN THIS COUNTRY.

"A NUMBER OF LARGELY FOREIGN OWNED COMPANIES HAVE EXPRESSED A WILLINGNESS TO INCREASE THE LEVEL OF AUSTRALIAN OWNERSHIP IN THEIR OPERATIONS. SOME HAVE ALREADY ACHIEVED SIGNIFICANT LEVELS OF AUSTRALIAN OWNERSHIP.

"A CONCERN WHICH HAS ARISEN UNDER THE PRESENT POLICY IS THAT, SHORT OF A COMPANY BECOMING MAJORITY AUSTRALIAN OWNED AND AUSTRALIAN CONTROLLED, IT REMAINS UNABLE TO DEVELOP A NEW MINING PROJECT ON ITS OWN WITHIN THE GOVERNMENT'S GUIDELINES SO FAR AS THE MINING AREA IS CONCERNED. THE GUIDELINES PROVIDE THAT THERE BE, A GENERAL RULE, AT LEAST 50 PERCENT AUSTRALIAN EQUITY AND JOINT AUSTRALIAN/FOREIGN CONTROL, ALTHOUGH THERE IS PROVISION FOR FLEXIBILITY.

"THIS REDUCES THE INCENTIVE FOR FOREIGN OWNED COMPANIES TO

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EMBARK UPON THE LONG TERM OBJECTIVE OF INTRODUCING MAJORITY AUSTRALIAN EQUITY. IT MAY BE SOME YEAR BEFORE THE LEVEL OF AUSTRALIAN EQUITY COULD BE INCREASED TO 50 PERCENT. EVEN THEN, UNLESS A COMPANY WERE AUSTRALIAN CONTROLLED

IT WOULD NOT NORMALLY BE ABLE TO DEVELOP A NEW PROJECT
IN ITS OWN RIGHT WITHIN THE EXISTING GUIDELINES.

"THE GOVERNMENT DOES NOT BELIEVE IT IS IN AUSTRALIA'S
INTERESTS THAT FOREIGN COMPANIES WHICH ARE ALREADY
SUBSTANTIALLY AUSTRALIAN OWNED AND WHICH ARE PREPARED TO
INTRODUCE MAJORITY AUSTRALIAN OWNERSHIP SHOULD SUFFER SUCH
A DISABILITY. IT BELIEVES THAT AUSTRALIA CAN
GAIN FROM THE DEVELOPMENT OF JOINTLY AUSTRALIAN
AND FOREIGN OWNED COMPANIES WHICH BRING
TOGETHER IN PARTNERSHIP THE SKILLS AND RESOURCES OF OVERSEAS
INTERESTS WITH AUSTRALIAN INVESTORS.

"THE GOVERNMENT HAS THEREFORE DECIDED TO MODIFY THE EXISTING
GUIDELINES IN A MANNER WHICH WILL ENABLE PARTLY AUSTRALIAN
OWNED FOREIGN COMPANIES TO PROCEED MORE EASILY WITH THEIR
INVESTMENT PLANS, BY PROVIDING AN INCENTIVE TO THEM TO
INCREASE AUSTRALIAN OWNERSHIP.

"THE MODIFICATIONS, WHICH I AM ANNOUNCING TODAY, ARE DESIGNED
TO PROVIDE A FRAMEWORK FOR THE "NATURALIZATION" OF FOREIGN
OWNED COMPANIES OVER A PERIOD OF TIME. THE BROAD ARRANGEMENTS
ARE CONSISTENT WITH THE GOVERNMENT'S POLICY OF ADMINISTERING
THE 50 PERCENT GUIDELINES FLEXIBLY, WITH PROVISION FOR THE
GRADUAL PHASING IN OF AUSTRALIAN EQUITY. THESE MODIFICATIONS
DO NOT AFFECT THE POLICY IN RELATION TO URANIUM PROJECTS OR THE
REQUIREMENT OF THE FOREIGN TAKEOVERS ACT.

"IN ANNOUNCING THESE MODIFICATIONS, THE GOVERNMENT IS IN NO WAY
SUGGESTING THAT COMPANIES SHOULD FEEL THAT THEY ARE EXPECTED,
OR HAVE AN OBLIGATION, TO PROCEED TO AUSTRALIANIZE. I EMPHASIZE
THAT IT WILL BE FOR INDIVIDUAL COMPANIES TO DECIDE, ON THE
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BASIS OF THEIR OWN COMMERCIAL JUDGEMENTS, WHETHER THEY WOULD
WISH TO DO SO.

"A COMPANY WISHING TO TAKE ADVANTAGE OF THE BENEFITS AVAILABLE
UNDER THE ARRANGEMENTS WILL BE REQUIRED TO MEET CERTAIN PRE-
CONDITIONS:"

"(I) A MINIMUM 25 PERCENT AUSTRALIAN EQUITY;

"(II) AMENDMENT OF ITS ARTICLES OF ASSOCIATION TO
PROVIDE FOR A BOARD A MAJORITY OF WHICH ARE AUSTRALIAN
CITIZENS; AND

"(III) A PUBLIC COMMITMENT TO INCREASE AUSTRALIAN EQUITY
TO 51 PERCENT SUBJECT TO AGREED UNDERSTANDINGS BETWEEN THE
COMPANY, MAJOR SHAREHOLDER INTERESTS AND THE GOVERNMENT, AND
REGULAR DISCUSSIONS WITH THE FOREIGN INVESTMENT REVIEW BOARD
ON PROGRESS TOWARDS ACHIEVING 51 PERCENT AUSTRALIAN OWNERSHIP.

". A COMPANY WHICH ACHIEVES 51 PERCENT AUSTRALIAN OWNERSHIP AND HAS AN AUSTRALIAN BOARD (AS OUTLINED ABOVE) WOULD BE CLASSIFIED AS A NATURALIZED COMPANY. IT WOULD BE ABLE TO PROCEED WITH NEW PROJECTS IN ITS OWN RIGHT, IN PARTNERSHIP WITH AN AUSTRALIAN COMPANY, A NATURALIZED COMPANY OR A NATURALIZING COMPANY, WITHIN THE GOVERNMENT'S GUIDELINES FOR NEW PROJECTS. HOWEVER, A NATURALIZED COMPANY WOULD, IN THE ABSENCE OF SPECIAL CIRCUMSTANCES, BE PRECLUDED FROM UNDERTAKING A PROJECT AS A JOINT VENTURE WITH A WHOLLY OVERSEAS OWNED COMPANY, AS THIS WOULD INVOLVE A DEPARTURE FROM THE 50 PERCENT GUIDELINE.

"A COMPANY IN THE PROCESS OF NATURALIZATION WOULD BE GIVEN PRIOR CREDIT FOR ACHIEVING 51 PERCENT AUSTRALIAN OWNERSHIP AND WOULD THEREFORE BE ABLE TO PROCEED WITH A NEW PROJECT ON THE UNCLASSIFIED

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SAME BASIS AS OUTLINED ABOVE.

". THE GOVERNMENT WOULD EXPECT THE NATURALIZATION PROCESS TO TAKE PLACE PRIMARILY BY WAY OF NEW SHARE ISSUES TO AUSTRALIANS TO FUND NEW PROJECTS AND EXPANSIONS, RATHER THAN BY TAKEOVERS WHICH WILL REMAIN SUBJECT TO CASE-BY-CASE EXAMINATION UNDER THE FOREIGN TAKEOVERS ACT.

". THE RIGHTS OF A NATURALIZING COMPANY WOULD BE WITHDRAWN SHOULD IT NOT ADHERE TO THE AGREED UNDERSTANDINGS.

"A COMPANY WISHING TO PARTICIPATE IN THESE ARRANGEMENTS WOULD BE REQUIRED TO REACH AN UNDERSTANDING WITH THE GOVERNMENT ON PRACTICAL ARRANGEMENTS FOR ACHIEVING 51 PERCENT AUSTRALIAN OWNERSHIP. THE GOVERNMENT DOES NOT BELIEVE THAT IT WOULD BE REALISTIC TO IMPOSE A STRICT TIMETABLE BECAUSE OF COMMERCIAL CONSIDERATIONS OUTSIDE THE COMPANY'S CONTROL. AS PART OF THE ARRANGEMENTS THERE WOULD NEED TO BE A GENERAL UNDERSTANDING WITH THE MAJOR SHAREHOLDER INTERESTS OF THE COMPANY ON THE PROCESS OF NATURALIZATION AND THE EXERCISE OF VOTING POWERS IN RESPECT OF THE AUSTRALIAN BUSINESS.

"I WOULD MAKE IT CLEAR THAT THE GOVERNMENT REMAINS OF THE VIEW THAT THE OBJECTIVE OF 50 PERCENT AUSTRALIAN EQUITY IN NEW MINERAL PROJECTS IS A REASONABLE. ONE IT WILL CONTINUE TO ADMINISTER THIS POLICY FLEXIBLY TO ENSURE THAT NEW INVESTMENT IS NOT PREVENTED FROM PROCEEDING WHERE AUSTRALIAN EQUITY CAPITAL IS NOT AVAILABLE OR AUSTRALIAN PARTICIPATION IN THE CIRCUMSTANCES OF A PARTICULAR PROJECT IS NOT COMMERCIALY PRACTICABLE.

THIS POLICY HAS TO DATE SERVED WELL AUSTRALIA AND FOREIGN INVESTORS ALIKE. IT HAS CREATED A FAVORABLE CLIMATE FOR FOREIGN INVESTMENT WHILE PROVIDING OPPORTUNITIES FOR AUSTRALIANS TO PARTICIPATE IN NEW PROJECTS.

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"THE GOVERNMENT BELIEVES THAT THE CHANGES WHICH I HAVE ANNOUNCED TODAY ARE CONSISTENT WITH ITS DESIRE TO ENCOURAGE FOREIGN INVESTMENT IN THIS COUNTRY WHILE AT THE SAME TIME PRESERVING THE FUNDAMENTAL ELEMENTS OF THE EXISTING POLICY. I ADD THAT WE WILL BE KEEPING POLICY IN THIS AREA UNDER REVIEW IN THE LIGHT OF EXPERIENCE AND CHANGING CIRCUMSTANCES.

"EXCHANGE CONTROL

"AS PART OF THE OVERALL REVIEW OF FACTORS WHICH COULD INHIBIT FOREIGN INVESTMENT IN AUSTRALIA, THE GOVERNMENT HAS ALSO EXAMINED THE PRESENT EXCHANGE CONTROL PROCEDURES IMPINING ON CAPITAL INFLOW. IT HAS CONCLUDED THAT BASICALLY THE PRESENT PROCEDURES ARE APPROPRIATE AND SERVE ESSENTIAL POLICY PURPOSES.

"NEVERTHELESS, A NUMBER OF DECISIONS HAVE BEEN MADE WHICH WILL STREAMLINE THE EXCHANGE CONTROL PROCEDURES.

" THE GOVERNMENT HAS DECIDED THAT THE EMBARGO ON OVERSEAS BORROWINGS FOR PERIODS OF LESS THAN 6 MONTHS AND CERTAIN RELATED INDIRECT FORMS OF OVERSEAS BORROWINGS IS NO LONGER REQUIRED IN PRESENT CIRCUMSTANCES AND THE EMBARGO WILL THEREFORE BE SUSPENDED AS FROM 9 JUNE. THIS WILL INCLUDE THE SUSPENSION OF:-

". THE EMBARGO ON NON-RESIDENT DEPOSITS WITH A MATURITY OF LESS THAN SIX MONTHS, PLACED WITH BANKS, FINANCE COMPANIES AND OTHER FINANCIAL INSTITUTIONS;

". THE RESTRICTIONS WHICH PROHIBIT NON-RESIDENTS FROM INVESTING IN FIXED INTEREST SECURITIES WITH MATURITIES OF LESS THAN SIX MONTHS;

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". SURVEILLANCE OVER MOVEMENTS IN INTERCOMPANY INDEBTEDNESS. COMPANIES WHICH ARE INDEBTED TO RELATED COMPANIES OVERSEAS WILL NO LONGER BE REQUIRED TO FURNISH CERTIFICATES TO THE RESERVE BANK RELATED TO VARIATIONS IN SUCH INDEBTEDNESS.

". THE GOVERNMENT HAS REVIEWED THE PRESENT ARRANGEMENTS WHEREBY THE RESERVE BANK DOES NOT GRANT EXCHANGE CONTROL APPROVAL TO A FOREIGN INVESTMENT PROPOSAL UNTIL AFTER THE TREASURER HAS DECIDED THAT THERE IS NO FOREIGN INVESTMENT POLICY OBJECTION TO IT. IN FUTURE, FOREIGN INVESTORS WHO SUBMIT APPLICATIONS TO THE RESERVE BANK THAT SATISFY EXCHANGE CONTROL REQUIREMENTS WILL BE ABLE TO RECEIVE EXCHANGE CONTROL APPROVAL IN ADVANCE OF

FOREIGN INVESTMENT APPROVAL BY THE TREASURER. THE EXCHANGE CONTROL APPROVAL WILL BE SUBJECT TO THE CONDITION THAT ANY NECESSARY FOREIGN INVESTMENT APPROVAL IS OBTAINED. THE EFFECT OF THIS CHANGE IN THE PROCEDURES SHOULD BE TO MINIMIZE DELAYS TO THE FOREIGN INVESTORS."

"AT PRESENT, DECISIONS TAKEN ON EXCHANGE CONTROL AND FOREIGN INVESTMENT MATTERS ARE SUBJECT TO THE PROVISIONS OF THE ENVIRONMENT PROTECTION (IMPACT OF PROPOSALS) ACT. THE IMPLICATIONS OF USING THE PROVISIONS OF THIS ACT IN RELATION TO EXCHANGE CONTROL AND FOREIGN INVESTMENT MATTERS WILL BE REVIEWED IN THE CONTEXT OF THE REVIEW OF THE ACT WHICH IS PRESENTLY TAKING PLACE. THE RESULT OF THE REVIEW WILL BE ANNOUNCED IN DUE COURSE."

3. COMMENT: REVISED GUIDELINES, WHILE NOT DIFFERING IN ANY IMPORTANT SENSE FROM THOSE ANNOUNCED BY FORMER TREASURER LYNCH IN APRIL 1976(REFTEL B), ARE CLEARLY DESIGNED TO STREAM-LINE CURRENT FOREIGN INVESTMENT APPROVAL PROCEDURES AND ARE THE RESULT OF EXTENSIVE STUDY BY THE FOREIGN INVESTMENT REVIEW BOARD (FIRB) AND THE FOREIGN INVESTMENT DIVISION OF THE TREASURY. THE "NATURALIZATION" SCHEME IS DESIGNED TO PERMIT MINING VENTURES TO START WITHOUT THE NEED TO MAKE TIME-CONSUMING PRELIMINARY SEARCHES FOR AUSTRALIAN EQUITY, UNDER AN UNCLASSIFIED

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AGREED UPON PROGRAM FOR ACQUIRING SUCH EQUITY AT A LATER DATE. AUSTRALIAN MINING INDUSTRY COUNCIL (AMIC) REPRESENTATIVE TOLD EMBOFF THAT ON A PRELIMINARY READING AMIC DOES NOT SEE AN IMMEDIATE SPURT IN MINING INVESTMENT IN AUSTRALIA SIMPLY BECAUSE THE MARKETS JUST AREN'T THERE. HE SAID THAT THIS WOULD APPLY TO NICKEL, COPPER, ZINC, COAL AND IRON. HE ADDED THAT THE ONE EXCEPTION MIGHT BE BAUXITE AND HE FORESAW THAT NEW GUIDELINES MIGHT SMOOTH THE WAY FOR THE ALWEST PROJECT IN WESTERN AUSTRALIA. HE ALSO SAID THAT NEW GUIDELINES MIGHT GIVE SOME ADDITIONAL INCENTIVE TO EXPLORATION, AS PREVIOUSLY EXPLORATION VENTURES KNEW THAT IF SUCCESSFUL THEY IMMEDIATELY HAD TO SURRENDER 50 PERCENT OF THEIR EQUITY TO AUSTRALIAN INTERESTS; THEY WILL NOW BE ABLE TO PHASE IN THE SURRENDER OF EQUITY. THE RELAXATION OF EXCHANGE CONTROLS ON SHORT TERM FOREIGN LOANS IS SEEN BY SOME AS OPENING THE WAY FOR THE DEVELOPMENT OF A BALANCED FOREIGN EXCHANGE MARKET IN AUSTRALIA.

4. OPPOSITION SPOKESMAN REALLY HAD TO SCRATCH TO FIND GROUNDS FOR CRITICIZING ANNOUNCEMENT, AND ABOUT ALL THEY COULD COME UP WITH WAS THAT IT MIGHT BE TOO "OPEN ENDED. SQUIRE UNQUOTE VANCE

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